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BROOKLYN OFFICE

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

**BARBARA SCHWAB et al., individually and
on behalf of all others similarly situated,**

Plaintiffs,

v.

PHILIP MORRIS USA, INC. et al.,

Defendants.

No. CV 04-1945 (JBW)

**MEMORANDUM AND ORDER
ON BATCO'S MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFFS' RICO CLAIMS**

JACK B. WEINSTEIN, Senior District Judge:

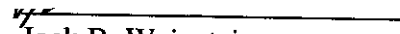
Plaintiffs have brought this class action pursuant to 18 U.S.C. § 1962(c) alleging that defendants formed an association-in-fact enterprise the purpose of which was "to defraud the public into believing that light cigarettes were a healthy alternative to regular cigarettes, or even quitting, in order to maximize sales and profits." *See* Pls.' Sec. Am. Compl. ("Compl.") ¶ 200 (Docket No. 95). Plaintiffs allege that British American Tobacco (Investments) Limited ("BATCo") conspired with the other defendants in this case to further the alleged enterprise's objectives in violation of 18 U.S.C. § 1962(d).

BATCo moves to dismiss pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that plaintiffs cannot prove BATCo's participation in any conspiracy charged. *See* Def. BATCo's Mem. (Docket No. 419).

The motion is denied since discovery is not yet concluded. *See* Mem. & Order of Sept. 21, 2005 (Docket No. 752) (denying immediate stay and referring further discovery to magistrate

judge). The contentions respecting the viability of this action against BATCo will be deemed incorporated into the parties' briefs and argument on the plaintiffs' motion to certify.

SO ORDERED.



Jack B. Weinstein

Dated: September 27, 2005
Brooklyn, New York